April 25, 2005

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Excerpts from Majority Leader's Speech to the Bond Club of New York
April 25, 2005

"We need a new era of civility in American political life. And to those who say that's unrealistic, all we have to do is look to the recent past. For 70 percent of the 20th Century, the same party controlled the White House and the Senate. Yet no minority ever denied a judicial nominee with majority support an up or down vote on the Senate floor.

"Howard Baker's Republican Minority didn't deny Democrat Jimmy Carter's nominees. Robert Byrd's Democratic Minority didn't deny Republican Ronald Reagan's nominees. Bob Dole's Republican Minority didn't deny Democrat Bill Clinton's nominees.

"These minorities showed self-restraint. They respected the Senate's role in the appointments process, as it was designed by the Framers of the Constitution. But, above all, they showed civility. They might have disagreed with the majority, but they played by the rules that were on the book and had been for centuries."

"To this day, even though a majority of Senators support Priscilla Owen, she has been denied an up or down vote on the floor of the Senate. I know its hard to believe that someone can get 84% of the vote in Texas, but not even the courtesy of a vote in the United States Senate. That how far out of the mainstream this judicial obstruction is. Justice Owen deserves better. She deserves a vote."

Noteworthy

“The easiest way is to go back to what we've done for 214 years since the birth of this nation, really. Every President, Democrat and Republican, sent a nominee, federal judge to the Senate of the United States at the point it was reported out, voted out by the Judiciary Committee, would be an up-or-down vote. Not a filibuster. An up-or-down vote, if that person clearly had a majority.”

-Senator Dole, 4/25/05, CNN Inside Politics

Full transcript of Senator Dole on CNN Inside Politics

Events

Senators Sessions and Brownback will hold a press conference with Bishop Harry Jackson, Senior Pastor, Hope Christian Church, Lanham, MD and African American Pastors calling for vote on Justice Brown’s nomination; 3:30pm; S-207

EDITORIAL: Yes or no on judge nominees

GRAND RAPIDS (MI) PRESS
Sunday, April 24, 2005

Soon -- the sooner the better -- Republicans in the U.S. Senate will try a rare procedural step to end Democrats' blocking of votes on federal appeals court nominations. They deserve to succeed.

The country -- particularly this part of the country -- needs judges and it is entitled to senators who cast votes rather than contrive to obstruct them. Some of President Bush's nominations for the U.S. Court of Appeals have been waiting four years for up-or-down decisions by the Senate. Democrats have kept the appointments shelved by filibustering: that is, by using the Senate's tradition of unlimited debate to hold the floor and prevent votes.

No state is affected more than Michigan. Of 10 Court of Appeals nominees who have been denied votes, four are from this state. They would sit on the Cincinnati-based Sixth Circuit Court of Appeals, which serves Michigan and three other states. Democrats have blocked the votes out of deference to the obstructionist wishes of Michigan's Sens. Carl Levin, D-Detroit, and Debbie Stabenow, D-Lansing.

The vacancies on the Sixth Circuit amount to 25 percent of the court's strength, giving "our" court the worst vacancy situation of the dozen nationwide. And though the court has tried to fill in with retired judges and judges borrowed from elsewhere, it's still a short-handed bench. So no surprise that the Sixth Circuit also is the nation's slowest-moving federal appeals court. The almost year-and-a-half average in concluding cases is 60 percent longer than the average for all appeals courts.

If the Michigan nominations could come to a Senate vote, they likely would be approved. Neither Sen. Levin nor Sen. Stabenow has disputed the nominees' qualifications. Each of the four is a well-respected state or federal judge. The senators object on the basis that, in the 1990s, two of former President Clinton nominees from Michigan didn't receive committee votes from the Republican-run Senate. Republicans go back even further, citing Michigan nominees of former President George H.W. Bush who were stalled when Democrats held the Senate majority.

In all, a dozen Court of Appeals nominees -- including the Michigan four -- are likely to be blocked this year under current filibuster rules. Democrats generally accuse the nominees of being

extremists or radicals or otherwise overly conservative. Most are judges and most have the top judicial qualification rating of the American Bar Association.

Senators should examine nominees according to their own lights and vote accordingly. But that is very different than using a long-standing debate privilege to prevent the entire Senate from voting. Never before has the filibuster been used in this manner.

The remedy threatened by Republicans is unfortunate because it does cut into the Senate's free-debate tradition. But clearly that custom has been abused at the expense of the courts and the general public. The Republican change would enable a 51-vote majority -- not 60 as under current rules -- to end debate on judicial nominations and proceed to up-or-down votes.

Nothing unreasonable about that. Where the founders wanted super-majority votes, the Constitution says so. The document makes no such stipulation for judicial confirmations. Thus a reform that returns judicial decisions to where they were for 200 years, with decisions by simple majority votes, fits both the letter and spirit of the Constitution.

Democrats often point out that the Senate has confirmed more than 200 of Mr. Bush's judicial nominees. True, but the heavy majority of those have been for district court positions. At the appeals court level, a step below the Supreme Court, filibusters have kept 10 out of 52 nominations from being voted upon.

The Constitution provides that the president chooses federal judges. The Senate can refuse to go along, but that is supposed to occur by votes, not blocking of votes. Senators -- certainly Michigan's Sens. Levin and Stabenow -- need to get back to that.

FOR IMMEDIATE RELEASE **Monday, April 25, 2005**

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MEDIA ADVISORY

Sessions, Brownback to Hold Press Conference with African American Pastors Calling for Fair Vote for Rogers Brown

Washington, D.C.—Senators Jeff Sessions (R-AL) and Sam Brownback (R-KS) will hold a press conference tomorrow, Tuesday, April 26, at 3:30 p.m. in the Capitol (S207), with leading African American pastors including Bishop Harry Jackson of Maryland, calling for a fair, up-or-down vote on filibustered judicial nominee Janice Rogers Brown, re-nominated by President George W. Bush for the D.C. Circuit Court of Appeals.

WHO: Senator Jeff Sessions
Senator Sam Brownback
Bishop Harry Jackson, senior pastor, Hope Christian Church, Lanham, Md. and other African American pastors

WHAT: Press Conference

WHERE: U.S. Capitol Building; Mansfield Room (S-207)

WHEN: TOMORROW-Tuesday, April 26, 3:30 p.m.

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CNN -- Inside Politics – Sen. Dole interview on Judicial Nominations

CNN 4/25/2005 3:45:00 PM:

JUDY WOODRUFF: with me now to talk about filibusters as well as other issues is republican senator Elizabeth Dole of North Carolina. good to see.

SENATOR ELIZABETH DOLE: you happy to be with you today.

WOODRUFF: where does this argument over judicial nominees sustained right now?

SEN. DOLE: first of all, the democrats started this for 214 years if a nominee arrives on the senate floor there has been an up-or-down vote. If they have a clear majority of senators in favor of that nominee and, of course, the last two years, last session of Congress, rather, it has been a majority. Not the majority vote but 60 votes for ten of the president's nominees for courts of appeals positions. This just has to be changed. We've got to go back to what was happening for 214 years. And also to give the Senate a chance to express its advice and consent, which we're not able to do now.

WOODRUFF: you're not afraid that if this comes to a vote and the so-called nuclear option prohibiting the filibuster imposed that you're going to get gridlock in the Senate on both sides?

SEN. DOLE: well, you know, the Democrats are the ones who are saying if you go to your constitutional right, which is within the procedural rules of the Senate that's article I section v, if you were to enact that which Senator Byrd did four times during his time as majority leader, four times he utilized that rule. He said if you're going to that do - we're going to shut down the Senate. I think that would be a huge mistake, that's what the Democrats are saying they will do. The easiest way is to go back to what we've done for 214 years since the birth of this nation, really. Every President, Democrat and Republican, sent a nominee, federal judge to the Senate of the United States at the point it was reported out, voted out by the judiciary committee, would be an up-or-down vote. Not a filibuster. An up-or-down vote, if that person clearly had a majority.

WOODRUFF: I just spoke with the Senate Minority Leader Harry Reid and he said he is open to compromise. I asked about a proposal in the ""Washington Post"" by columnist David Broder who said the democrats need to step back first, but clearly there would need to be compromise on both sides. Do you think something would work that would involve both sides pulling back?

SEN. DOLE: I think that clearly our Majority Leader Bill Frist has been reaching out to Senator Reid for many, many months, this has been going on a long time that Bill Frist has been trying to get a compromise to sit down and talk about this, and indeed, you know, when you look back, I brought quotes here as to what some of the Democrats have said in the past. Patrick Leahy, June 18th, 1999. "If we don't like somebody the President nominates vote him or her down, but don't hold them this anonymous unconscionable limbo. Ted Kennedy, many others who were -- opposing what they were for. So let's just see. This is a matter of the two leaders sitting down and talking. I have no idea if Senator Reid suddenly has had a change of heart here that he's willing to compromise some way. But that certainly has not been the case, Judy, for many months.

WOODRUFF: do you think Senator Frist made a mistake before speak before a religious conference about this?

SEN. DOLE: I don't. Constantly meetings are occurring, as he was talking about fairness. he was talking about the fact that as I've mentioned for 214 years, the Senate has given an up-or-down vote. he was talking about the fact that we need to give our advice and consent which we're prevented from. That was a straightforward message. indeed, you know, if you want to talk about going into religious meetings, think about John Kerry in the pulpit with his anti-Bush rhetoric. Think about all the meetings the Democrats have had in churches through the years. Jesse Jackson. So if anything, I would say the tagline on the title of that meeting, perhaps, was not the best. but certainly Bill Frist carried a straightforward message, that and there was nothing wrong with the video being presented.

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'Nuclear option' is not radioactive

Grand Junction Daily Sentinel Editorial
Monday, April 25, 2005

Sometime soon, probably within the next few weeks, Republicans in the U.S. Senate will have to decide whether to go forward with the poorly named "nuclear option:" changing the Senate rules to allow a filibuster of judicial nominees to be halted on a simple majority vote rather than the 60 votes now required.

Since Democrats appear prepared to endlessly filibuster 10 of President Bush's judicial nominees rather than allow them to obtain a full Senate vote, the GOP ought to proceed with the change in filibuster rules.

Oh sure, Democrats and liberal-leaning pundits in the media will declare that the action signals the end of the American Republic, a trampling of democracy and an affront to all things decent.

Here's Senate Minority Leader Harry Reid of Nevada: "It would mean that one man, sitting in the White House, has the practical ability to personally hand out lifetime jobs to judges whose rulings can last forever."

Well, yes, they are lifetime jobs and judges' rulings can last forever. But the president can only nominate a judge. The Senate would still have to confirm them, and those who believe an appointee is not fit for the bench would simply have to convince at least 49 of their colleagues to vote against the nominee. That's how democratic institutions such as the Senate are supposed to work.

Others accuse the Republicans of abuse of power and attacking the venerated traditions of the U.S. Senate by seeking to change the filibuster rules.

That's strange talk coming from a political party that, when it had the majority in the Senate, at least twice changed the rules by which filibusters could be ended. Until 1917, there was no limit on members' filibuster abilities, so the Democrat-controlled Senate approved a provision that would end debate with a two-thirds vote. In 1975, they changed that to the current 60 votes, or three-fifths of the members. Some venerated tradition.

A few Republicans are wary of changing the filibuster rules because they fear the public won't support them. Indeed, one GOP poll reportedly shows that only 37 percent of those contacted support changing the rules.

But a far larger number — more than 80 percent — believe all judicial nominees deserve a yes-or-no vote.

Republicans and Democrats alike should remember that former Senate Minority Leader Tom Daschle is watching from the sidelines these days in large part because he engineered endless filibusters of earlier Bush nominees. Preventing a vote on judicial nominees will be remembered far more by the public in general than a change in the arcane filibuster rules.

But politics aside, the GOP should limit the filibuster because it is the right thing to do. Presidential nominees for all positions deserve a vote of the full Senate, and the public has a right to know how Senators cast their ballots on those nominees.

Let's have real, live filibusters Today's form is invisible

Rocky Mountain News Editorial

April 24, 2005

The modern "filibuster" in the U.S. Senate is to the historical one as direct deposit is to walking to the bank. Or video football is to the pads-and-helmet game. It's an effort-free fraud that should either be abolished or reinstated in its original form.

Should Senate Democrats choose to filibuster judicial nominations, they should at least be required to use the old-fashioned kind that requires a personal commitment on their part and focuses public attention on their behavior.

If Americans have a sentimental attachment to the filibuster, it may be because the one they remember best is fictional: Jimmy Stewart's 23-hour monologue in the 1939 movie, *Mr. Smith Goes to Washington*. But real filibusters are waged primarily on ideological matters, and usually by losers who are trying to turn back the tide of history - such as John C. Calhoun defending slavery in 1841, Strom Thurmond against the Civil Rights Act of 1957, and Robert Byrd against the Civil Rights Act of 1964.

In recent years the target has shifted from proposed legislation to judicial nominees. But an actual speech is no longer necessary. A filibuster starts when a minority of 41 senators notifies leadership that it intends to filibuster. It's 41, because under rules established in 1975, debate can be shut off by a vote of 60 senators.

The Senate can continue with other legislation, but the issue at hand - confirmation of a judge, in this case - can't go to a vote.

Now the Republican leadership is contemplating a rule change. Majority Leader Bill Frist might soon seek a ruling from the Senate's presiding officer, Vice President Dick Cheney, that filibustering judges is unconstitutional. If Cheney agrees it is, his decision could be upheld by a simple majority. It cannot be filibustered.

The Democrats have, in the great Senate tradition, threatened disruption if Republicans try to proceed, saying they might paralyze the process by invoking other rules (like reading the journal aloud) that are normally waived.

Are filibusters an important weapon needed by a virtuous minority to defend itself against a tyrannical majority? It really depends on whose ox is being gored. They aren't

written into the constitution; they're a part of the Senate rules. Those who oppose filibusters today may suddenly find them useful tomorrow, when they're in the minority.

There is reason to sympathize with a tactic that permits a beleaguered legislative minority to *occasionally* thwart the majoritarian will, but the filibuster we have today imposes no cost whatever on those invoking it. It basically allows 41 senators to stop the legislative agenda of the other 59 whenever they feel like it. That's counter to the democratic traditions of this nation, and Republicans are right in wanting to end this form of judicial filibusters.

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Op-ed by Senator Wayne Allard,

The Constitution vs. a Senate rule

Greely Tribune; 4/24/05

THERE IS MUCH misinformation surrounding the Senate confirmation of judicial nominations. I hope to shed some light on one of our elected body's most important obligations -- and tell the truth about the partisan obstruction of our constitutional duties.

What we are debating is whether to uphold the Constitution or to amend it without going through the appropriate process by enforcing what is a mere Senate rule, a tool of parliamentary procedure: the filibuster rule.

My colleagues on the other side would have everyone believe that the filibuster is being eliminated. That is not the case. It is only being eliminated in the case of judicial nominations, not legislation. They don't mention that the filibuster is not a law; it is not in the Constitution. Nor do they mention that the filibuster rule was never applied to judicial nominations until very recently -- when the Democrats broke with more than 200 years of Senate procedure and unleashed the filibuster during the last Congress to block 10 judges -- for the first time in the history of the country.

The Democrats want to have it both ways. They want to change our form of government by blocking judges with the filibuster; they want to rewrite the Constitution by using the filibuster to thwart the advice and consent clause -- and then blame Republicans for simply saying, "Let's follow the Constitution and allow votes on judges; let's follow Senate tradition," while they ludicrously portray efforts to preserve the advice-and-consent clause as something akin to minority persecution.

Even more telling is the fact that several of the Democrats who are now ardent supporters of the judicial filibuster are the same ones who tried to eliminate the filibuster entirely just a few years ago, not only on judicial nominations but on every piece of legislation

In fact, the only sitting members of the Senate who are on record supporting the elimination of the filibuster are Democrats. In 1995, 19 senators -- all Democrats, not one Republican -- voted to eliminate the filibuster on all matters. Nine of the 19 Democrats who voted for that Harkin-Lieberman rule change remain in the body today. And all of those senators now defend the filibustering of judicial nominations.

Article II of the Constitution, known as the advice-and-consent clause, requires Senate approval of judicial nominations. This obligation is only fulfilled when the Senate allows an up or down vote on a nominee. The use of a filibuster to block judicial nominations is not only an unprecedented minority obstruction but an attack on the Constitution itself.

The basic decision the Senate must make is this: Either constitutional advice and consent prevails or the filibuster is allowed to override the Constitution, in effect amend it without going through the proper procedure. It is the Democrats who are unleashing a weapon that threatens the Constitution and the precedents of the Senate. It is the Democrats who are revising the history of our country and seeking to undermine our separate but equal system of government.

Sen. Wayne Allard, a Republican is Colorado's senior senator. He has served in the U.S. Senate since 1997.